

**§ 15A-266.5A. Statewide sexual assault examination kit testing protocol.**

(a) Legislative Intent. – The General Assembly finds that deoxyribonucleic acid (DNA) evidence is a powerful law enforcement tool that can identify unknown suspects, create case linkages, connect crimes to known perpetrators, and exonerate the innocent. Timely testing is vital to solve cases, punish offenders, bring justice to victims, and prevent future crimes. It is the intent of the General Assembly that every sexual assault examination kit reported to law enforcement in this State be tested and to eliminate the inventory of untested sexual assault examination kits located statewide. The purpose of this section is to address the manner in which sexual assault examination kits are processed and the protocol for testing the statewide inventory of untested sexual assault examination kits identified pursuant to the findings of the statewide audit completed pursuant to Section 17.7 of S.L. 2017-57.

(b) Definitions. – The following definitions apply in this section:

- (1) CODIS – As defined in G.S. 15A-266.2.
- (2) Collecting agency. – Any agency, program, center, or other entity that collects a sexual assault examination kit.
- (3) Reported sexual assault examination kit. – A sexual assault examination kit collected from a person who consented to the collection of the sexual assault examination kit and has consented to participate in the criminal justice process by reporting the crime to law enforcement.
- (4) State DNA database. – As defined in G.S. 15A-266.2.
- (5) Unfounded sexual assault examination kit. – A reported sexual assault examination kit, whereupon completion of the investigation it was concluded by the investigating law enforcement agency, based on clear and convincing evidence, that a crime did not occur.
- (6) Unreported sexual assault examination kit. – A sexual assault examination kit collected from a person who consented to the collection of the sexual assault examination kit, but has not consented to participate in the criminal justice process.

(c) Notification and Submission Requirements for Kits Completed On or After July 1, 2019. – Any collecting agency that collects a sexual assault examination kit completed on or after July 1, 2019, shall preserve the kit according to guidelines established under G.S. 15A-268(a2) and notify the appropriate law enforcement agency as soon as practicable, but no later than 24 hours after the collection occurred. A law enforcement agency notified under this subsection shall do all of the following:

- (1) Take custody of a sexual assault examination kit from the collecting agency that collected the kit within seven days of receiving notification. The law enforcement agency that takes custody of a kit under this subdivision shall retain and preserve the kit in accordance with the requirements of G.S. 15A-268.
- (2) Submit a reported sexual assault examination kit to the State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, not more than 45 days after taking custody of the reported sexual assault examination kit.
- (3) Submit an unreported sexual assault examination kit to the Department of Public Safety not more than 45 days after taking custody of the unreported sexual assault examination kit. The Department of Public Safety shall store any kit it receives under this subdivision pursuant to the authority set forth in G.S. 143B-601(13).

(d) Notification and Submission Requirements for Kits Completed On or Before January 1, 2018. – Any law enforcement agency that possesses a sexual assault examination kit completed on or before January 1, 2018, shall do the following:

- (1) Establish a review team that may consist of prosecutors, active or retired law enforcement officers, sexual assault nurse examiners, victim advocacy groups, and representatives from a forensic laboratory. The review team required under this subdivision shall be established as soon as practicable, but no later than three months after the effective date of this section.
- (2) Utilize the review team established under subdivision (1) of this subsection to survey the law enforcement agency's entire untested sexual assault examination kit inventory and conduct a case review to determine each sexual assault examination kit's testing priority. The survey and review required under this subdivision shall be completed as soon as practicable, but no later than six months after the effective date of this section. The review required under this subdivision shall consider each of the following factors in determining the submission priority of a sexual assault examination kit:
  - a. Investigative and evidentiary value for the individual case.
  - b. CODIS potential to link profiles and identify possible serial offenders.
  - c. Potential for victim participation in the investigation and prosecution.
  - d. Potential value for admission as evidence under Rule 404(b) of the North Carolina Rules of Evidence.
  - e. Age and health of victim.
  - f. Potential for exculpatory value for a convicted person.
  - g. Any other factor the review team deems to be relevant.
- (3) Upon determination by the review team that a sexual assault examination kit is of priority status and not subject to subsection (e) of this section, the law enforcement agency shall notify the State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, of the sexual assault examination kit and submit a request for testing of the sexual assault examination kit. The law enforcement agency shall continue the process set forth in subdivisions (2) and (3) of this subsection until all untested sexual assault examination kits eligible for submission within its inventory have been submitted for testing. The following untested sexual assault examinations kits are not eligible for submission for testing under this subdivision:
  - a. Unreported sexual assault examination kits. Unreported sexual assault examination kits shall be sent within 45 days of the review required under subdivision (2) of this subsection to the Department of Public Safety for storage pursuant to the authority set forth in G.S. 143B-601(13).
  - b. Sexual assault examination kits that have been confirmed as unfounded sexual assault examination kits after a comprehensive case review by the law enforcement agency and complete review by the review team established under subdivision (1) of this subsection. The law enforcement agency shall track within the agency the number of sexual assault examination kits which are concluded to be unfounded along with a brief summary indicating the information and evidence supporting the determination of an unfounded sexual assault examination kit. If the law enforcement agency receives any information or evidence that creates investigative or evidentiary value for testing the unfounded sexual assault examination kit, the law

enforcement agency shall send the unfounded sexual assault examination kit to the State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, as soon as practicable.

- c. Sexual assault examination kits in which (i) a criminal prosecution has resulted in conviction, (ii) the convicted person does not seek DNA testing, and (iii) the convicted person's DNA profile is already in CODIS.

(e) Submission Requirements for Other Kits. – Sexual assault examination kits that are not subject to the requirements of subsections (c) or (d) of this section shall be submitted to the State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, as soon as practicable.

(f) Testing Requirements for Accepted Kits. – As soon as practicable after receiving a written request for testing of a sexual assault examination kit subject to subsection (d) of this section, the State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, shall notify the submitting law enforcement agency of the request's approval and provide shipment instructions for the sexual assault examination kit. The State Crime Laboratory, or a laboratory approved by the State Crime Laboratory, shall pursue DNA analysis of any sexual assault examination kit accepted from a law enforcement agency under this section to develop DNA profiles that are eligible for entry into CODIS and the State DNA Database pursuant to G.S. 15A-266.5 and G.S. 15A-266.7. The State CODIS System Administrator, or the Administrator's designee, shall enter a DNA profile developed under this subsection into the CODIS database pursuant to G.S. 15A-266.8 and into the State DNA Database, provided that the testing of the sexual assault examination kit resulted in an eligible DNA profile.

(g) Lack of Compliance. – Lack of compliance with the requirements set forth in this section shall not result in any of the following:

- (1) Constituting grounds upon which a person may challenge in any hearing, trial, or other court proceeding the validity of DNA evidence in any criminal or civil proceeding.
- (2) Justification for the exclusion of evidence generated from a sexual assault examination kit.
- (3) Providing a person who is accused or convicted of committing a crime against a victim a basis to request that the person's case be dismissed or conviction set aside, or providing a cause of action or civil claim.

(h) Sexual Assault Response and Training. – The Department of Justice, the North Carolina Coalition Against Sexual Assault, the North Carolina Victims Assistance Network, and the Conference of District Attorneys shall jointly develop and provide response and training programs to law enforcement and their sexual assault examination kit review teams regarding sexual assault investigations, including victim interactions and kit collection, storage, tracking, and testing. (2019-221, s. 2.)